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Attorneys for Defendant,  
BARCLAYS CAPITAL REAL ESTATE, INC.  
dba HOMEQ SERVICING,  
erroneously sued herein as HOMEQ SERVICING INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

JOHN ALLEN,  
Plaintiff,  
v.  
HOMEQ SERVICING INC.,  
Defendants.

**Case No.: 3:08-cv-01698 MMC  
NOTICE OF RESCHEDULED  
HEARING ON PLAINTIFF'S  
MOTION TO DISMISS  
COMPLAINT**

**Hearing Date: May 23, 2008  
Hearing Time: 9:00 a.m.  
Place: Courtroom 7, 19<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102**

**TO PLAINTIFFS AND THEIR COUNSEL OF RECORD HEREIN:**

PLEASE TAKE NOTICE that pursuant to the "Reassignment Order" issued  
in this case April 10, 2008, the original hearing date for Defendant's Motion to  
Dismiss was vacated and ordered to be rescheduled before the Honorable Maxine  
M. Chesney. Therefore, PLEASE TAKE NOTICE that on May 23, 2008 at 9:00

**NOTICE OF RESCHEDULED MOTION TO DISMISS**

1 a.m. or as soon thereafter as the matter may be heard in Courtroom 7, 19<sup>th</sup> Floor of  
2 the above-entitled court located at 450 Golden Gate Avenue, San Francisco,  
3 California 94102, Defendant BARCLAYS CAPITAL REAL ESTATE, INC. dba  
4 HOMEQ SERVICING, erroneously sued herein as HOMEQ SERVICING INC.  
5 (“Homeq”), will and hereby does move the Court to dismiss Plaintiff’s complaint  
6 with prejudice.  
7  
8

9 The motion is brought pursuant to Federal Rule of Civil Procedure 12(b)(6)  
10 for failure to state a claim for relief against Defendant. The motion will be based  
11 upon this notice of motion, the previously filed memorandum of points and  
12 authorities, all pleadings and documents filed herein, and any argument that may  
13 be presented or any matters of which judicial notice is requested or proper.  
14  
15  
16

17 DATED: April 4, 2008

HOUSER & ALLISON  
A Professional Corporation

19  
20 By: By: /s/ Jeffrey S. Allison

Eric D. Houser

Jeffrey S. Allison

Attorneys for Defendant

BARCLAYS CAPITAL REAL ESTATE, INC.  
dba HOMEQ SERVICING, erroneously sued  
herein as HOMEQ SERVICING INC.

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action. My business address is 9970 Research Drive, Irvine, California 92618.

On April 11, 2008, I served the following document described as:

**NOTICE OF RESCHEDULED HEARING ON PLAINTIFF'S MOTION TO DISMISS COMPLAINT**

On the following interested parties in this action:

Shawn Ridgell  
RIDGELL & LAWLOR LLP  
2128 Broadway  
Oakland, CA 94612  
(510) 986-1300

**[X]** VIA MAIL -- By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on the date following ordinary business practices. I am readily familiar with my firm's business practice and collection and processing of mail with the United States Postal Service and correspondence placed for collection and mailing would be deposited with the United States Postal Service at Irvine, California, with postage thereon fully prepaid that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on April 11, 2008, at Irvine, California.

  
Sherie L. Cleeré

Eric D. Houser (SBN 130079)  
Jeffrey S. Allison (SBN 173620)  
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JOHN ALLEN,  
Plaintiff,

v.

HOMEQ SERVICING INC.,  
Defendants.

**Case No.: 3:08-cv-01698 MMC**

**[PROPOSED] ORDER GRANTING  
MOTION TO DISMISS  
COMPLAINT**

**Hearing Date: May 23, 2008  
Hearing Time: 9:00 a.m.  
Place: Courtroom 7, 19<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102**

Defendant's Motion to Dismiss Complaint came before this Court for hearing May 23, 2008. Upon consideration of all written submissions and oral argument, the Court GRANTS Defendant's Motion to Dismiss with prejudice.

The Court grants the motion on the following bases:

**ORDER GRANTING MOTION TO DISMISS**

1           1.     Plaintiff fails to state a claim of relief for negligent interference with  
2 prospective economic advantage. The complaint does not allege any actual  
3 business or economic relationship, nor does it allege any economic relationship  
4 with the owner of the property. Further, Plaintiff does not and cannot allege  
5 Homeq knew of his purported business relationship. These are necessary elements  
6 of a claim for negligent interference with prospective economic advantage. *North*  
7 *American Chemical Co. v. Superior Court*, 59 Cal. App. 4th 764, 786 (1997); see  
8 also *Youst v. Longo*, 43 Cal. 3d 64, 71 n.6 (1987).  
9  
10  
11

12           2.     Plaintiff's cause of action for violation of the Fair Credit Billing Act,  
13 15 U.S.C. § 1666(a)(B)(ii), fails to state a claim for relief against Homeq, and  
14 should be dismissed with prejudice. The Act regulates the relationship between a  
15 creditor and an obligor when a dispute arises about a periodic statement sent by  
16 the creditor to the obligor. Here, there are no allegations that Homeq sent Plaintiff  
17 any kind of statement. Rather, Plaintiff alleges that at some point in time he was  
18 denied financing from a lender, allegedly because Homeq had reported a prior  
19 delinquency on an earlier loan to Plaintiff. These circumstances do not come  
20 within the Fair Credit Billing Act cited by Plaintiff.  
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22  
23  
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25           3.     Plaintiff's complaint specifically relies on an October 9, 2007 letter  
26 from Homeq to Plaintiff. When ruling on a Rule 12(b)(6) motion, the Court may  
27 consider certain materials other than the complaint itself without converting the  
28

1 motion to dismiss into a motion for summary judgment. *US v. Ritchie*, 342 F.3d  
2 903, 908 (9th Cir. 2003); *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998).  
3 “[A] document is not ‘outside’ the complaint if the complaint *specifically refers to*  
4 *the document* and if its authenticity is not questioned.” *Branch v. Tunnell*, 14 F.3d  
5 449, 453 (9th Cir. 1994) (emphasis added); *Id.* at 454.  
6

7  
8 The Note states that payments are due on the first day of each month.  
9 Therefore, even assuming Plaintiff’s allegations that Homeq reported Plaintiff’s  
10 loan delinquent, any such reporting would in fact be correct, since payment  
11 August 31 for a payment due August 1 is 30 days late. Therefore, Plaintiff’s own  
12 complaint, taken together with the documents that the Court may review in ruling  
13 on this motion to dismiss under Rule 12(b)(6), demonstrates that there was no  
14 incorrect credit reporting as to Plaintiff. Plaintiff therefore cannot allege sufficient  
15 facts under a cognizable legal theory against Homeq.  
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19 For the foregoing reasons, Defendant’s motion to dismiss is GRANTED,  
20 and Plaintiff’s complaint is hereby DISMISSED WITH PREJUDICE.  
21

22 IT IS SO ORDERED.  
23  
24

25 Date: \_\_\_\_\_

26 Maxine M. Chesney  
27 United States District Judge  
28

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ORDER GRANTING MOTION TO DISMISS

**PROOF OF SERVICE**

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On April 11, 2008, I served the following document described as:

**[PROPOSED] ORDER GRANTING MOTION TO DISMISS COMPLAINT**

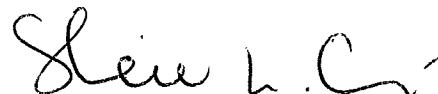
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